THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.22696 OF 2005

Dated November 2005

Between:

D.Rama Murthy S/o.Venkatrayulu

…Petitioner

And

The District Panchayat Officer, Chittoor.

…Respondent

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.22696 OF 2005

O R D E R:

The petitioner was elected as Sarpanch of Chandragiri village, Chandragiri Mandal, Chittoor District. The respondent herein passed an order dated 19.9.2005, withdrawing the powers of the petitioner to operate the funds of the Grampanchayat. The petitioner challenges the same.

Petitioner submits that the impugned order was passed in violation of principles of natural justice, and without jurisdiction. He contends that the power under rule 42 (1) of the Rules framed under G.O.Ms.No.30, Panchayat Raj & Rural Development & Relief Department, dated 20.01.1995, hereinafter referred to as
"the Rules", can be exercised, only against the Executive Authority of a Grampanchayat, and that the Sarpanch of a village cannot be treated as, or equated to the Executive Authority.

Sri C.Ramachandra Raju, learned counsel for the petitioner submits that the Andhra Pradesh Panchayat Raj Act, 1994, for short "the Act", maintains a clear

distinction between a Sarpanch and Executive Authority, and that the powers under rule 42 of the Rules can be invoked, only against an Executive Authority, and not against a Sarpanch. He has urged some other grounds also, touching the merits of the matter.

Learned Government pleader for Panchayat Raj, who took notice and received instructions at the state of admission, submits that rules 41 and 42 of the Rules have to be read, along with rule 40, and if so done, it emerges that the Sarpanch, who is conferred with the power to sign orders and cheques to operate the funds of Grampanchayat, is an Executive Authority, for all practical purposes. He contends that the action taken under the impugned order is only a temporary measure, and that the final order would be passed, after considering the explanation that may be submitted by the petitioner. He further contends that the petitioner had an effective alternative remedy of appeal, under sub-rule (2) of rule 42 of the Rules. He has also placed reliance upon the orders passed by this Court in some writ petitions.

The controversy in this writ petition is very narrow. The petitioner raises a question, as to the very jurisdiction of the respondent, in passing the impugned order. If it emerges that the respondent has jurisdiction to pass the impugned order, the writ petition would be liable to be dismissed, and the petitioner has to adopt one of the two courses, *viz*, either to submit an explanation and await a final order, or to prefer an appeal, under sub-rule (2) of rule 42 of the Rules, to the District Collector.

The impugned order was issued, in exercise of powers under sub-rule (1) of rule 42. It reads as under;

> "42(1) The District Panchayat Officer concerned may, for sufficient reasons to be recorded in writing, prohibit by an order any executive authority from drawing the moneys of the Gram Panchayat for such period as may be specified in such order:
>
> Provided that no such order shall be passed unless opportunity of making representation has been given to the executive authority concerned;
>
> Provided further that the District Panchayat Officer may issue an interim direction to the executive authority not to draw the moneys of the Gram Panchayat pending the exercise of this power under this sub-rule."

A perusal of the same discloses that the respondent is conferred with the power to prohibit an “Executive Authority” from drawing the funds of the Gram Panchayat, for such period, as may be specified by him, through an order. The first proviso mandates that any such order can be passed, only after providing an opportunity of making representation. The second proviso enables the respondent to impose restrictions on the power of the Executive Authority to draw the funds of the Gram Panchayat, pending the action initiated under that very sub-rule. The impugned order is in two parts. It calls for explanation under first proviso, directing the petitioner to explain, as to why action shall not be taken against him, under sub-rule (1). Secondly, it places restriction on such power, as provided for under the second proviso. To this extent, there does not exist much controversy.

It is beyond any trace of doubt that the action contemplated under sub-rule (1) of rule 42, can be initiated against an “Executive Authority”. The provision does not enable the respondent to take such action against any other authority, or person. The Rules were framed, in exercise of power under Section 268 of the Act. If the expression “Executive Authority” is not defined under the Rules, or the Act, it is possible to suggest that any person, either appointed, or elected, discharging executive functions, is amenable to the action under the said provision. If, however, the term is defined, it is impermissible to expand or restrict its scope.

The term “Executive Authority” was defined under Section 2(12) of the Act, originally, as under:

“**Executive Authority**” means;-

i. in the case of a gram panchayat or a group of gram panchayats having an executive officer, the executive officer, and if there is no executive officer in charge, the Sarpanch of the gram panchayat;

ii. in the case of any other gram panchayat, the Sarpanch thereof;”

In the year 2002, this definition was amended, through Act 22 of 2002 to be as under:

> “**2(12)** “**Executive Authority**” means the Panchayat Secretary appointed to each Gram Panchayat.”

Under the un-amended definition, the Sarpanch was liable to be treated, as Executive Authority, depending on the circumstances provided therein. After it is amended, there does not exist any scope for such a situation. Executive Authority invariably means the Panchayat Secretary, and no other. The word “Sarpanch” is defined under Section 2(37) of the Act, as the one who is elected under Section 14 of the Act. Hardly there exists any possibility for taking the Executive Officer, meaning thereby the Panchayat Secretary, for the Sarpanch, or *vice versa*. Nor there exist any circumstances for interchange of the powers and obligations of those two.

It is true that by amending rule 40 of the Rules, through G.O.Ms.No.137, dated 9.2.1996, the Government conferred powers of signing cheques and orders, in relation to Gram Panchayat funds, on the Sarpanch. However, rule 41, which deals with the control of power of Executive Authority under rule 40, was not correspondingly amended. Rules 40 and 41, as they stand now, read as under:

> “**40.** All orders or cheques against the Gram Panchayat fund shall be signed by the Sarpanch of the Gram Panchayat.
>
> **41.** The drawing of moneys under Rule 40 by the executive authority shall be subject to the control of, and the conditions laid down by the District Panchayat Officer concerned.”

There is a clear anomaly in these two rules. It is the Government that has to squarely blame itself for such a situation. At any rate, the fact that a Sarpanch was conferred with the power to sign cheques and orders under rule 40, cannot make him, the Executive Authority, *de horse* the definition of the respective terms under the Act. Even assuming that the amendment of rule 40 has the effect of bringing about such a situation, the rule cannot override the Act, and to the extent of conflict, the relevant rule has to give way, to the Act.

Where the provisions of a legislation are clear, they have to be enforced in their strict sense. A subordinate legislation can never be permitted to alter the meaning and scope of the specific term, defined under the parent legislation. Every step taken by the legislature is presumed to be meaningful, and neither the executive, nor the Courts can substitute their understanding of the term, for the one,

employed and defined by the legislature. If the A.P. State Legislature has altered the definition of Executive Authority, which hitherto, has taken in its fold, the Sarpanch also, exercise of power by the District Panchayat Officer has to accord with it, and under no circumstances, the legislative intention can be subverted. The principles are so firmly settled that citation of precedents in support thereof is almost superfluous.

Learned Government Pleader placed reliance upon the orders passed in W.P.Nos.14552 of 2004, dated 17.8.2004, 14912 of 2004, dated 31.8.2004, 17437 of 2004 dated 29.9.2004, and the one in W.A.No.38 of 2005, dated 31.01.2005.

The first of the writ petitions was filed by Sarpanch challenging an order passed under rule 42 (1) of the Rules. The writ petition was dismissed on the sole ground that the petitioner has to avail the remedy of appeal. under sub-rule (2) of rule 42. From the order it is not evident that the dispute as to the jurisdiction of the District Panchayat Officer, to pass an order under rule 42 (1) against a Sarpanch, was either raised, or considered. In the second of the writ petitions referred to above, the definition of the terms “Executive Authority” on the one hand, and “Sarpanch” on the other hand, under the relevant provisions of the Act, was not dealt with, obviously because arguments may not have been advanced. The contention as well as the finding in the said order was as under:

> “Learned counsel for the petitioner submits that under Rule 42(1) of the Rules issued in G.O.Ms.No.30 Panchayat Raj & Rural Development & Relief Department, dated 20.01.1995, for the reasons to be recorded in writing, the District Panchayat Officer may prohibit the executive authority from drawing money from Gram Panchayat for the period, but no such order shall be passed unless opportunity of making representation has been given to the executive authority. He further contends that the executive authority is replaced by Panchayat Secretary and the question of issuing the impugned show cause notice prohibiting the petitioner from drawl of the funds does not arise. He also contends that the petitioner is entitled to a notice before prohibiting him from drawing money. Rule 40 of the Rules, as amended by G.O.Ms.No.137, P.R.R.D., dated 22.03.1996, postulates that all cheques against the Gram Panchayat funds shall be signed by the Sarpanch of the said Gram Panchayat and the drawing of money under this Rule by the executive authority shall be subject to the control of, and the conditions laid down by the District Panchayat Officer concerned under Rule 41. Since the

order is passed under Rule 41(1) of the Rules, pending final orders, the same does not suffer from any irregularity.

In view of the same, the petitioner is directed to submit his explanation to the impugned show cause notice and only after passing the final order, he can avail the remedies available to him in accordance with law."

From this, it is difficult to discern that the Sarpanch, as definied under Section 2 (12) of the Act, was held, amenable to the action taken under rule 42(1) of the Rules.

W.P.No.17437 of 2004 was also filed under almost similar circumstances. A contention, as in the instant case, was no doubt raised, the attention of this Court does not appear to have been drawn to the relevant definitions. The contention of the petitioner and discussion therein, were as under:

"The petitioner, questioning the legality and validity of the said order, filed the present writ petition, contending that before passing the impugned order, the first respondent did not provide any opportunity to the petitioner and that the said order can be passed only against the Executive Authority of the Gram Panchayat, but not against the Sarpanch.

It is not disputed that the Sarpanch of the Gram Panchayat is conferred with the powers of Executive Authority to draw monies to the Gram Panchayat, which can be drawn by the Executive Authority under the above rules and the impugned order is passed only as an interim measure pending passing of orders under rule 42 of the Rules. Rule 42 contemplates issuance of notice before prohibiting the petitioner from drawing moneys to Gram Panchayat. In the absence of passing final orders under Rule 42, it is always open to the authorities to take such steps as required for protecting further mis-utilization of funds"

After making the said observation, the learned Single Judge directed the District Panchayat Officer to complete the enquiry, within a period of six weeks, from the date of receipt of the order.

Writ Appeal No.38 of 2005 was filed against the said order. The main complaint in the writ appeal was about the observation made in the writ petition, amounting to a semblance of admission, on the part of the petitioner that the

Sarpanch is conferred with the power of Executive Authority. After taking note of the same, the Division Bench left it open to the appellant, to apply for review before the learned Single Judge. It is not known as to what happened, thereafter.

From the above, it cannot be culled out that there exists authoritative pronouncement by this Court, to the effect that the Sarpanch of a Gram Panchyat answers the description of "Executive Authority", defined under Section 2(12) of the Act. On the other hand, the Sarpanch holds an elected office, whereas the Panchayat Secretary, who answers the description of "Executive Authority", is an appointee by the competent authority. There is not even a semblance of parity in the manner in which they are inducted into the respective offices. The overlapping or similarity that existed under the definition of the term "Executive Authority", as it stood before 2002, was completely wiped out, as a consequence of the amendment, through Act 22 of 2002.

Therefore, viewed from any angle, the Sarpanch of a Gram Panchayat cannot be treated, as an Executive Authority, and the power under rule 42, which may be invoked against an Executive Authority alone, can by no stretch of imagination be exercised, in relation to the acts and omissions, on the part of a Sarpanch. Since the impugned order is found to be without jurisdiction, the petitioner cannot be required to undergo ordeal of an appeal.

The writ petition is accordingly allowed, and the impugned order is set aside. There shall be no order as to costs.

_____

(L.NARASIMHA REDDY, J)

Dt. .11.2005.

Note: L.R.Copies be marked.

(B/o)

PAN